

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Criminal Case No. 10-20302

Bryndon Clentional Weathersby,

Honorable Sean F. Cox

Defendant.

**ORDER NOTIFYING DEFENDANT OF RECHARACTERIZATION AND DIRECTING
DEFENDANT TO FILE MEMORANDUM**

Defendant Brydon Clentional Weathersby (“Defendant”) pleaded guilty to being a convicted felon in possession of ammunition. This Court sentenced Defendants on January 21, 2011, and issued a Judgment on January 31, 2011. Defendant did not file a direct appeal.

Acting *pro se*, on February 19, 2013, Defendant filed a “Motion To Re-Sentence.” (Docket Entry No. 51). Although the motion does not expressly reference 28 U.S.C. § 2255, the relief requested in this motion is consistent with a motion to vacate sentence under § 2255 and is therefore the equivalent of a petition under § 2255. Before characterizing Defendant’s motion as a § 2255 motion, however, Defendant must be given the opportunity to withdraw the filing. *See In re Shelton*, 295 F.3d 620, 622 (6th Cir. 2002). This is because “[a]n unintended byproduct of [liberally construing *pro se* filings as § 2255 petitions] . . . is that it may effectively deprive an uninformed *pro se* litigant of the future opportunity to file a motion to vacate his sentence under § 2255.” *Id.* at 621. After a prisoner files one motion under § 2255, the Antiterrorism and Effective Death Penalty Act generally prevents a prisoner from filing a second or successive §

2255 motion. Thus, the prisoner must be aware that the Court's construction of their petition may limit their ability to pursue future avenues of collateral relief and must be given the opportunity to either agree with the Court's construction or withdraw their motion.

Accordingly, **Defendant is hereby NOTIFIED that the Court intends to construe his February 19, 2013, filing as a motion for relief under 28 U.S.C. § 2255.**

Defendant is DIRECTED to file a one-page memorandum on or before **May 23, 2013**, indicating whether he agrees with the Court's intended characterization of his February 19, 2013, motion or whether he withdraws the motion. In the event that Defendant does not file a memorandum on or before that date, his February 19, 2013, filing will be deemed a motion under § 2255.

IT IS SO ORDERED.

Dated: May 2, 2013

S/ Sean F. Cox
Sean F. Cox
U. S. District Court Judge

I hereby certify that on May 2, 2013, the foregoing document was served upon counsel of record by electronic means and upon Bryndon Weathersby by First Class Mail at the address below:

Bryndon Weathersby #527165
141 First Street
Coldwater, MI 49036

Dated: May 2, 2013

S/ J. McCoy
Case Manager